

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

v.

No. CV 10-931 RB/LFG
CR 04-2502 RB

JOSE ANTONIO PRADO-DIAZ,

Defendant-Movant.

ORDER FOR RESPONSE ON LIMITATIONS ISSUE

THIS MATTER is before the Court on Defendant-Movant's Motion to Vacate, Set Aside, or Correct Sentence [Doc. 1]. On October 26, 2010, the Court ordered Defendant-Movant Jose Antonio Prado-Diaz ("Prado-Diaz") to show cause why his Motion to Vacate should not be dismissed as untimely. [Doc. 3]. In response to the order, Prado-Diaz filed a document titled "Petitioner's Jurisdictional Memorandum" [Doc. 4], stating that his Motion to Vacate was timely because he filed it within one year of the time he received notice that final judgment had been entered.

Judgment in the criminal proceeding against Prado-Diaz was initially entered on January 19, 2006 [Doc. 57 in CR 04-2502 RB]. Prado-Diaz did not file an appeal of the judgment at that time, nor did he file a Motion under Section 2255, prior to expiration of the deadlines for doing so. Two years later, on February 5, 2008, the Court entered an Amended Judgment [Doc. 58 in CR 04-2502 RB] to correct a clerical error.

Prado-Diaz was not represented by counsel at the time the Amended Judgment was filed. He states that he never received a copy of the Amended Judgment and points out that the Notice of

Electronic Filing indicates that no copy was sent to him. He states further that he did not receive notice of entry of the Amended Judgment until well over two years later, on July 21, 2010, when he requested a copy of the docket sheet. He argues that he should therefore have until July 21, 2011 to file his Motion to Vacate, given the one-year deadline of 28 U.S.C. § 2255(f).

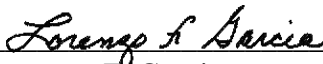
Pursuant to Rules Governing Section 2255 Proceedings, Rule 4(b), the Court will order the United States to file a response to Prado-Diaz's "Jurisdictional Memorandum," setting forth the government's position with respect to the statute of limitations issue. The United States need not file a full Answer to the Motion to Vacate until such time as the limitations issue is resolved.

Order

IT IS THEREFORE ORDERED that the Court's Order to Show Cause [Doc. 3] is hereby quashed.

IT IS FURTHER ORDERED that the Clerk is directed to forward to the United States Attorney a copy of Defendant's Motion to Vacate, Set Aside, or Correct Sentence and supporting papers and exhibits, if any, together with a copy of this Order.

IT IS FURTHER ORDERED that, on or before December 8, 2010, the United States shall respond to Defendant-Movant's "Jurisdictional Memorandum" [Doc. 4], setting forth the government's position with respect to the limitations issue. Prado-Diaz will have until December 29, 2010 to file a reply to the United States's response.



Lorenzo F. Garcia
United States Magistrate Judge